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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



AUG 21 2003

File:  Office: Nebraska Service Center

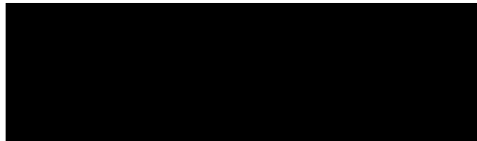
Date:

IN RE: Petitioner
Beneficiary



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



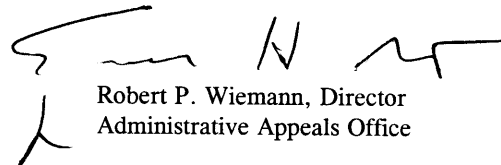
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), in order to employ him as a director of music and assistant pastor at an annual salary of \$24,000.

The director denied the petition in a decision dated March 6, 2002. Specifically, the director found that the petitioner had failed to establish that (1) the position requires any prescribed religious or theological training; (2) the person employed in the position must be a member of the petitioner's denomination, or that he or she participates in the services beyond arranging and directing the musical accompaniment; (3) the beneficiary possesses any religious or theological training; (4) the beneficiary is authorized to conduct religious worship and perform other duties usually performed by authorized members of the clergy and is coming solely to perform in that capacity; and (5) it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel for the petitioner submits a brief asserting that the position of director of music and/or assistant pastor is a religious occupation, not a secular one, that requires significant theological training and understanding. Counsel further asserts that sufficient evidence was submitted to establish that the petitioner had the ability to pay the proffered wage as of the date of filing the petition in April 2001. No additional documentation, other than counsel's brief, was submitted on appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher

not authorized to perform such duties.

Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

And, the regulation at 8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must

state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

A review of the record reflects some inconsistencies in the petitioner's identity. Part 1 of the Form I-360 petition lists the petitioner's name as [REDACTED] in care of [REDACTED]. However, financial, corporate and tax-exempt documentation contained in the record are in the name of [REDACTED] in [REDACTED] of the [REDACTED] Inc. The record also contains two Forms G-28, Notices of Entry of Appearance of Attorney or Representative. One is dated April 11, 2000 on behalf of [REDACTED] while the other is dated April 7, 2001 on behalf of [REDACTED]. The record contains an undated letter from [REDACTED] that partially explains these inconsistencies. The Pastor states:

[REDACTED] which is a ministry of the [REDACTED] with its headquarters in Nigeria and no less than 2000 parishes around the world and approximately 60 of such in North American started as a parish in 1996 with approximately 15 members. It is a Pentecostal ministry with essentially the same doctrine and theology with Pentecostal movements around the world. [REDACTED] has undergone a phenomenal growth from the approximately 15 people who started it in 1996 to no less than 500 regular worshippers in the Sunday Service. The church database will boast a conservative number of 800 registered members. As a result of the tremendous growth that the church experienced in the Chicago area, attracting a pot pourri [sic] of people cutting across race, ethnic, cultural and religious barriers, the church further spread by planting an additional church in the Chicago area about a year ago; [REDACTED] a ministry of the [REDACTED]

The beneficiary is a native and citizen of Ghana who last entered the United States on August 16, 1997 as a nonimmigrant visitor for pleasure, with authorization to remain until February 15, 1997.¹ The beneficiary has remained in the United States unlawfully since the expiration of his authorized period of admission. The Form I-360 indicates that the beneficiary has not been employed in the United States without Bureau permission. There is no evidence contained in the record as to how the beneficiary has supported

¹ It is noted that the Form I-360 petition misstates the beneficiary's entry date as August 16, 1994, not 1997.

himself for the past six years.

With the initial filing of the petition, the petitioner submitted a letter describing the beneficiary's duties as follows:

In this position, he will interface regularly between the Director and other members of this department, he will assist the Director in formulating and implementing policies and procedures for the department that he assists in overseeing. He will actively participate in conducting all music rehearsals and practices which could be several times a week. . . . He will assist with the conduction and actively participate in the musical aspects of the Sunday Service and Wednesday services. He will also participate in different services as the seasons and occasions require. . . . He will assist in developing music by writing songs and composing some and designing instrumental and technical compliments for the music in conjunction with the director. . . .

The petitioner stated that the beneficiary had been performing the above-listed functions for [REDACTED] for over two years and that he *will be offered* remuneration at the rate of \$24,000 annually, in addition to insurance and rent subsidy.

In support of the petition, the petitioner also submitted documentation including: (1) a letter indicating that the beneficiary was baptized in the Methodist Church, Ghana; and (2) a copy of a certificate indicating that he underwent four years of training in Music and Instrumentals at the University of Ghana from February 1992 through March 1996.

In response to the director's request for additional evidence to establish that the beneficiary is qualified in the position offered, the petitioner responded:

There is no requirement . . . that the person must be a demonstrated musician in any manner. It is more important that the person has the authority to lead in that spiritual environment and possesses the spiritual capacity and religious leadership qualities. . . . He will assist in formulation of spiritual principles to govern the kind and dissemination of music the Church plays and has direct responsibility for disciplinary issues within that department. It is a full ministerial position. . . .

The beneficiary is very well qualified for this position. He has extensive experience in gospel music and in working in the church music department. He has been carrying out these functions with our church here in Chicago since 1997. Prior to that he had been with a

Methodist Church in Ghana. He also graduated for [sic] Music School to further show his qualification. As far as carrying out ministerial duties, he is ordained in this Church to exercise all the authority that would be granted a pastor and he has been exercising the same. . . .

The petitioner failed to provide documentary evidence of the beneficiary's ministerial qualifications.

On appeal, counsel for the petitioner submits a brief stating that:

Contrary to [Bureau] opinion, significant theological training and understanding is required to compose and arrange and deliver music in this setting

. . . like a minister, the religious musician has the responsibility to develop music that carries certain messages with the beliefs and theology of the organization it [sic] belongs to It will take a religiously trained and skilled musician to understand, propagate and conduct music for any specific religion In comparing religious occupations, it is clear that music is most comparable to the Minister's function as it in itself entails preparation of a ministration to a congregation and the delivery of that ministration. . . .

The record has been carefully reviewed. It is concluded that the petitioner, through counsel on appeal, has failed to adequately address the director's findings. The petitioner has failed to satisfy several of the eligibility requirements to classify the beneficiary as a special immigrant religious worker.

First, the statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. The term "continuously" is not new to the context of religious workers. In 1980 the Board of Immigration Appeals determined that a minister of religion was not "continuously" carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. See *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

The petition was filed on April 16, 2001. Therefore, the petitioner must establish that the beneficiary has been continuously engaged in a religious occupation for the two-year period beginning on April 16, 1999.

In the instant case, the petitioner asserts that the beneficiary has served its ministry since 1997. It also indicates that he has not been employed without Bureau authorization. The record contains

no evidence that the beneficiary was paid any wages by the petitioning organization during the two years immediately preceding the filing date of the petition, nor that the work performed was on other than a volunteer basis.

Second, the petitioner has failed to establish that the beneficiary is qualified to engage in a religious vocation or occupation. The petitioner states that the beneficiary is ordained, but has submitted no documentary evidence to support that assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Third, the petitioner has failed to establish that the beneficiary's activities for the petitioning organization require any religious training or qualification. While counsel contends that significant theological training and understanding is required for the position, no evidence to support that claim is contained in the record. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Fourth, the petitioner has failed to establish that the position offered is a qualifying religious vocation or occupation. The petitioner has submitted no documentary evidence to establish that the position is a traditional occupation in its denomination, or that it is a position that would be filled by a full-time salaried employee who completed training in preparation for a career in religious work.

Finally, counsel has not submitted any current financial documentation to establish that the petitioner has the ability to continue to pay the beneficiary the proffered wage until the beneficiary receives lawful permanent residence status.

8 C.F.R. 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of

proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966). Inherently, the Bureau must consider that the possible rationale for the instant petition is the petitioner's desire to assist an alien member of its congregation to remain in the United States for purposes other than provided for under the special immigrant religious worker provisions. Based on the record as constituted, the petitioner has not adequately demonstrated that it has either the ability or the intention to remunerate the beneficiary in a permanent salaried position or that the beneficiary seeks to enter the United States solely to pursue this occupation.

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.